

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE

ANTHONY-DECARLO HAYS, SR.,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 11-2193-JDT-tmp
	)	
A. C. WHARTON, et al.,	)	
	)	
Defendants.	)	

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ORDER ADOPTING REPORT AND RECOMMENDATION  
OF MAGISTRATE JUDGE

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On January 9, 2014, Magistrate Judge Tu M. Pham issued a report [DE# 50], recommending that the motions to dismiss of Defendant Larry Godwin [DE#s 35, 36] for failure to effect timely service of process be granted. Plaintiff filed objections on January 17, 2014, along with a motion for additional time in which to respond to Defendant Godwin's motions to dismiss [DE# 52]. Plaintiff states that he never received copies of the motions to dismiss. He also accuses the court of "impropriety" and "chicanery" and acting "in a biased manner."

At the outset, the court notes that Plaintiff's statements border on being contemptuous. Plaintiff is advised to use extreme caution before making unfounded and unsupported accusations in the future. Such conduct may result in sanctions. See Roadway Express, Inc. v. Piper, 447 U.S. 752, 765 (1980) (Every federal court has the inherent power to sanction abusive litigation practices."); see also Conklin v. Warrington Tp., 2006 WL 2246415 (M.D.

Pa. 2006) (The exercise of advocacy “never justifies the use of disrespectful, unprofessional or indecorous language to the court. Respect and zealous advocacy are not mutually exclusive concepts. When zealous advocacy degenerates into impertinent, scandalous, and insulting language, it is the court's duty to address squarely the offending conduct, and to tailor a sanction appropriate to the offense.”)

The court will accept the statement of facts and law in Plaintiff’s objections as his response to Defendant’s motions to dismiss.<sup>1</sup> Therefore, the motion for extension of time is DENIED as moot.

Because Magistrate Judge Pham has thoroughly set out the facts and law relating to Defendant’s argument that Plaintiff did not serve him with process in a timely manner such that the action against him in his individual capacity should be dismissed, an issuance of a more detailed written opinion would be unnecessarily duplicative. The report and recommendation of Magistrate Judge Pham is hereby ADOPTED, and Defendant Godwin’s motions to dismiss are GRANTED. Defendant Godwin in his individual capacity is DISMISSED as a defendant.

On August 8, 2103, the claims against Defendant Godwin in his official capacity were dismissed [DE# 33]. Therefore, all claims against Defendant Godwin have now been dismissed, and he is no longer a party to this action.

IT IS SO ORDERED.

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<sup>1</sup> Defendant Godwin has provided a copy of the letter dated August 20, 2013, that was sent to Plaintiff along with a notice of appearance, motion to dismiss and accompanying memorandum, and affidavits of Defendant [DE# 54].

s/ **James D. Todd**  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE